

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Xcel's Petition for Approval to
Reduce Rates and Issue Refund Regarding
Minnesota Property Tax Reduction

ISSUE DATE: September 4, 2002

DOCKET NO. E-002/M-02-514

ORDER DIRECTING REFUND AND RATE
REDUCTION, WITH ASSOCIATED
COMPLIANCE FILINGS

PROCEDURAL HISTORY

On April 10, 2002, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed a petition proposing a refund of \$13,610,444 as the mechanism to reflect changes in Minnesota's personal property tax law consistent with Minn. Stat. § 216B.1646. Xcel proposed a 2002 refund method based on a per kWh allocation method and to make ongoing refunds thereafter.

On May 6, 2002, the Department of Revenue supplied its letter certifying the tax reduction on generating machinery is determined to be \$17,992,991. Revenue indicated that amount is to be divided among the states and between customer classes in accord with Commission policies.

On May 20, 2002, based on the Department of Revenue's certified amounts, the Company revised its calculation of the Minnesota retail jurisdiction portion of this reduction and average annual rate impact, reducing the refund amount to \$13,510,041.

On June 10, 2002, the Minnesota Department of Commerce (the Department) filed comments, recommending approval conditioned on certain changes to the refund methodology.

On June 10, 2002, Minnesota Energy Consumers (MEC) urged the Commission to use its statutory authority to lower the Companies' rates by their total property tax reduction, i.e. on their reduction in property taxes transmission and distribution, as well as generation assets. MEC argued that this would be consistent with the letter and intent of Minn. Stat. § 216B.1646 and with the Company's rate freeze obligations.

On June 10, 2002, the Minnesota Chamber of Commerce filed comments.

On June 20, 2002, Xcel filed Reply Comments.

The Commission met on July 25, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. XCEL'S PROPOSAL

Xcel proposed to make a single refund of the entire annual 2002 tax reduction related to the Company's generation machinery. Xcel would make the refund on a per-kWh basis, using the most recent 12 months of sales information. The Company would make the 2002 refund within 60 days of the Commission's Order and make a compliance filing 30 days after completion of the refund. The Company acknowledged that the Legislature intended the 2001-2002 period to be used to measure the reduction and for that amount to be refunded in each subsequent year. The Company stated that it would file a refund plan for the ongoing reduction.

In reply comments, Xcel opposed MEC's contention that the Commission was authorized to and should require the Company to refund or reduce rates to return to ratepayers the tax savings related to the tax reductions on transmission and distribution assets. The Company argued that the 2002 amendments to Minn. Stat. § 216.1646 clarified that the statute only required an adjustment for the generation component, and that the utility may voluntarily pass on any additional property tax savings.

II. THE DEPARTMENT'S COMMENTS

The Department recommended several modifications to Xcel's proposal, as well as alternatives for the Commission to consider.

A. Allocation to Customer Class

The Department opposed Xcel's proposed per-kWh method, arguing that the Company's method does not match the way customers have paid for property taxes in the past and continue to pay in existing rates and gives the biggest property tax refund to the customers using the most energy. Consistent with its recommendation in the Minnesota Power proceeding, Docket No. E-015/M-01-1957, therefore, the Department recommended that the allocation to class be made based on the class-cost-of-service study (CCOSS) from Xcel's most recent rate proceeding, Docket No. E-002/GR-92-1185. The Department argued that even if the CCOSS is outdated, the current rates are based in large part on that CCOSS.

B. Allocation Between States (Jurisdictional Allocator)

The Department objected to Xcel using a jurisdictional allocator that the Company had developed based on 2001 data because it had not been reviewed by interested parties and the Commission in a rate proceeding. The Department preferred, instead, to use the allocator extensively reviewed and approved in the Company's most recent rate case.

More fundamentally, however, the Department opposed using any jurisdictional allocator at all. The Department contended that Xcel should return the entire tax reduction amount to Minnesota retail customers because the property tax refund is a reduction in property taxes that are payable to the State of Minnesota and are for Minnesota generation plants that largely serve Minnesota customers.

C. Eligible Customers

The Department recommended that the Commission follow its decision in the recent Minnesota Power tax reduction refund Order and direct Xcel to include all firm and interruptible retail customers, with the exception of those served under the competitive rate schedules as defined in Minn. Stat. § 216B.162.¹

D. Transmission and Distribution Tax Reductions

The Department stated that the changes in statutory language made in the 2002 session clarified that the refunding of the transmission and distribution property tax savings is voluntary.²

E. Permanence of Reduction and Annual Refund

The Department noted that a permanent reduction to rates was consistent with the revised statutory language and recommended acceptance of Xcel's proposal that the refund for 2002 be in the form of a lump-sum refund.

III. XCEL'S RESPONSE TO THE DEPARTMENT'S RECOMMENDATIONS

Responding to the Department's recommendations, Xcel

¹ *In the Matter of the Petition of Minnesota Power to Implement Personal Property Tax Savings Crediting Methodology*, Docket No. E-015/M-01-1957, ORDER DIRECTING RATE REDUCTION AND REQUIRING FURTHER FILING (May 29, 2002) at page 6, Ordering Paragraph 1(c).

² Comments by the Minnesota Chamber of Commerce appear to accept this view and emphasize returning all generation-related tax reductions.

- continued to argue in favor of the kWh method, but offered to support the Department's CCOSS method if the Commission did not accept the kWh method;
- opposed the Department's recommendation to return the whole amount of the generation refund to Minnesota retail customers but accepted the Department's recommendation to use the jurisdictional allocators from the last rate proceeding, instead of the newly calculated factor supplied by the Company;³
- agreed with the recommendation to include all firm and interruptible Minnesota retail customers, excluding competitive rate customers defined in Minn. Stat. § 216B.162; and
- agreed to make a lump-sum refund for the year 2002 and to file a miscellaneous filing to adjust base rates this fall for January 1, 2003 implementation.

IV. MEC'S RECOMMENDATIONS

MEC recommended that the Commission require Xcel to refund and lower rates by the total reduction in property taxes (generation, transmission and distribution). MEC presented several arguments in support of its recommendation, including the following:

- While the statute might not require a lowering of rates for the tax savings associated with transmission and distribution, the statute does not prohibit the Commission from ordering the lowering of rates for the reductions in property taxes associated with transmission and distribution.
- The Commission has great latitude in making rate decisions. The Commission must consider a reasonable return for the utility in establishing a rate for consumers reflecting the cost of service. The interests of the utility must be fairly balanced with the interests of the ratepayers. The utilities' tax liabilities must be taken into account.
- Until the utilities demonstrate a rate increase is necessary, any surpluses that are above and beyond what the Commission originally contemplated when it set the rate should be returned to ratepayers. The Commission should distinguish between those profits derived from economic efficiency and productivity, and those profits resulting from a legislative windfall.
- Xcel agreed in its stipulation with MEC in its merger docket (E,G002/PA-99-1031) that it would not increase retail electric rates or expand the scope of any automatic adjustment mechanism. This contemplated that Xcel would lock in the full advantage of the rate reduction in the merger. This is now being undermined by refusing to return legislatively mandated cost reductions, resulting in effectively increasing rates.

³ This increases the Minnesota portion by \$11,681, bringing the refund amount to \$13,521,722.

- Any doubt as to the reasonableness should be resolved in favor of the consumer. Minn. Stat. § 216B.03.

V. COMMISSION ANALYSIS AND ACTION

The Commission finds that Xcel's proposal to make a lump-sum refund for the year 2002, as clarified and modified below, is reasonable and the Commission will approve it. The refund will be for 2002 and will begin within 60 days of this Order. The Company will provide customers with notice of the refund and, within 30 days of completing the refund, will file a report detailing the amounts refunded and any remaining balances.

To return the tax reduction amount in future years, Xcel will be required to file no later than September 15, 2002 new rates to go into effect January 1, 2003, calculated based on the decisions in this Order. The Company will provide notice to its customers of this rate change and should include a copy of its proposed notice with the September 15, 2002 filing.

The Commission's clarifications of and exceptions to the Company's proposal are discussed below.

A. Customers Eligible to Receive Refund

The Commission clarifies that Xcel accepted and the Commission approves the Department's recommendation that refunds be limited to all firm and interruptible Minnesota retail customers and will not be given to competitive rate customers defined in Minn. Stat. § 216B.162. This is consistent with what the Commission approved in MP's recent property tax reduction refund case, Docket No. E-015/M-01-1957. In its May 29, 2002 Order regarding MP's refund, the Commission explained:

Unlike cost-based rates, the competitive rate is not set to recover MP's property tax or other capacity charges. Competitive rate customers, therefore, should not share in the tax-reduction benefits to customers whose rates were calculated to recover property taxes. Order at page 3.

B. Amount to be Refunded

The Commission concludes that the amount to be refunded to Minnesota firm and interruptible customers is the total amount of tax savings associated with Xcel's generation machinery minus the amounts properly allocated to the Company's customers in other jurisdictions.

1. Generation Only

Any question whether the legislature intended Minn. Stat. § 216B.1646 to require refund of personal property tax reduction amounts realized with respect to distribution and transmission as well as generation were fully resolved in the negative by the 2002 Legislative Session, which amended the language of Minn. Stat. § 216B.1646, effective July 1, 2001.

MEC accepted that the amended language of Minn. Stat. § 216B.1646 clearly does not require utilities to refund their distribution and transmission-related personal property tax reductions. MEC also acknowledged that, at first blush, its request for the Commission to require Xcel to refund their distribution and transmission-related personal property tax reductions may appear to be a request to adjust rates based on a single issue. Nevertheless, MEC argued, the Commission can and should require Xcel to refund such amounts. MEC argued that its request is supported by the will of the legislature and the public policy purposes underlying the regulation of Minnesota's utilities.

The Commission has carefully considered MEC's arguments and is not persuaded by them. In addition to clearly not ***requiring*** refunds beyond generation-related tax reduction, the statute goes on to characterize the utility's refund of any additional tax reductions (i.e. reduction due to lower taxes on transmission and distribution) as "***voluntary***" on the part of the utility. In using this language, the legislature has in effect restricted the Commission from ordering refunds for more than the generation-related tax reductions.

Viewed in light of this clear and specific indicator of legislative intent regarding transmission and distribution-related property tax reductions, MEC's arguments based on more general sources of the Commission's statutory authority (Minn. Stat. §§ 216B.01, .08, and .03) are unavailing. In addition, the Commission follows the traditional ratemaking principle that rates set in the Company's rate case are unaffected by various subsequent cost increases and decreases and remain at that level until there is a showing that the rates have become unreasonable. The record in this matter does not indicate that this is the case.

The Commission also rejects MEC's other arguments that proposed alternative grounds for requiring refund of the entire tax reduction. First, MEC's report that the utilities agreed during the 2001 legislative session to legislative language directing a pass-through of all the tax savings does not control. Instead, the Commission is guided by the legislative language actually adopted by the legislature and by traditional ratemaking principles cited previously. Second, the Commission does not accept MEC's assertion that Xcel was "effectively" raising its rates, in violation of the terms of its merger, by not returning all legislatively mandated cost reductions. A cost reduction can increase the Company's profit or reduce its losses, but it certainly does not increase rates.

2. The Jurisdictional Allocator

Rates for Xcel have been established in the past as if the Company operates one system covering portions of several states: Minnesota, Wisconsin, North Dakota, and South Dakota. Consistent with that approach, operating costs such as Xcel's Minnesota personal property tax liability on generation have been allocated between the states and the rates set for and paid by Xcel's customers in Wisconsin, North Dakota, and South Dakota, therefore, have been recovering portions of that cost.

Despite the fact that Minnesota ratepayers had not been paying 100% of Xcel's Minnesota personal property tax liability on generation, the Department recommended that Xcel should be required to return the entire amount saved due to the reduced personal property tax on generation. The Department argued that this was appropriate because 1) the property tax in question is on property located in Minnesota, is payable to the State of Minnesota, and is on generation plants that largely serve Minnesota customers. Further, the Department noted, Xcel is likely to keep the tax reductions related to transmission and distribution.

The Commission is not convinced by these arguments. The Commission believes that it would be inappropriate to give to Minnesota ratepayers tax savings related to taxes that were allocated to and paid by customers in other jurisdictions.

The Department also indicated, however, and Xcel has agreed, that if any jurisdictional allocator were approved it should be the Generation Demand allocator approved in the Company's most recent rate case. This allocator was used in determining the property tax amounts payable by the various state jurisdictions. Adoption of this allocator increases the tax savings for Minnesota ratepayers by about \$11,000.

C. Allocation to Customer Classes

The Commission accepts the Department's recommendation and will require Xcel to base allocations between customer classes on the Company's most recently approved class-cost-of-service study (CCOSS) rather than accepting the Company's proposed per-kWh method. This is appropriate because the current rates charged customers are based in large part on the CCOSS and the kWh method (also favored by MEC and the Chamber of Commerce) does not match the way customers have paid for property taxes in the past and continue to pay for property taxes in their existing rates.

ORDER

1. Within 60 days of this Order, Xcel shall begin its proposed lump-sum refund for the year 2002 to firm and interruptible Minnesota retail customers (excluding competitive rate customers defined in Minn. Stat. § 216B.162) for the tax savings associated with its generation machinery.
2. The Company shall calculate the refund amount and shall allocate it between the customer classes based on the decisions made in this Order. See discussion at pages 6-9 above.
3. Along with its lump-sum refund, the Company shall include a notice to customers explaining the refund.

4. Within 30 days after completing the refund, Xcel shall make a compliance filing with the Commission and parties detailing the amounts refunded by class and any remaining balances.
5. No later than September 15, 2002, Xcel shall file with the Commission and parties tariff pages reflecting the new rates calculated based on the decisions in this Order (see pages 6-9) and targeted to become effective January 1, 2003. The Company's filing shall include a proposed notice to customers about the rate reduction.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).